

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO RUSIANA Y BROQUEL, ACCUSED-APPELLANT.

G.R. No. 186139. October 05, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the Decision dated December 28, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02347, which affirmed the March 31, 2006 Decision in Criminal Case No. 02-0678 of the Regional Trial Court (RTC), Branch 275 in Las Piñas City. The RTC convicted accused-appellant Leonardo Rusiana of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

An Information was filed against accused-appellant, alias "Unad," as follows:

That on or about the 12[th] day of August 2002, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver, give away to another, distribute or transport 0.04 gram of Methylamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[1]

Upon his arraignment, accused-appellant pleaded not guilty to the offense charged.

The Prosecution's Version of Facts

During trial, the prosecution presented PO2 Jerome Mendoza and PO2 Wilson Paule as witnesses. It dispensed with the testimony of Forensic Chemist Abraham Tecson when it was stipulated that he would testify in accordance with Exhibits "C," "D," "G," "H," and "H-1," qualified by the fact that he had no personal knowledge as to where and from whom the subject drugs were recovered.[2] PO2 Rufino Dalagdagan's testimony was likewise dispensed with, since the Investigation Report (Exhibit "B") was admitted by the parties during the pre-trial.

PO2 Mendoza testified that at about 9:00 in the evening on August 12, 2002, he was at his office with fellow officers Tuldanes, Castor, Paule, and Dantes. Someone arrived and informed PO2 Paule of a certain Unad's illegal drug activities. PO2 Paule reported the information to Police Inspector Raquion. The resulting buy-bust team created was composed of Police Inspector Dantes, PO2s Tuldanes, Paule, Castor, Dolleton, and Mendoza, with Paule assigned as poseur-buyer. Inspector Raquion handed a PhP 100 bill, as buy-bust money, to PO2 Paule.

The team proceeded to Manukan in Las Piñas past 9:00 p.m. PO2 Paule and the informant went to Unad's house. The informant called Unad, who met with them outside. PO2 Paule exchanged the marked PhP 100 bill with suspected shabu from Unad. PO2 Paule then introduced himself as a police officer, which made Unad try to resist. He was caught by PO2 Paule while running back to his house and was frisked. The marked money and another six (6) plastic sachets were found on his person. Two other men were found in his house, one of whom threw a sachet. The man was likewise arrested. Back at the office, all six sachets were marked by the investigator on duty,

PO2 Dalagdagan, with the initials "LBR" and numbered from 1 to 6.[3]

PO2 Paule, who acted as poseur-buyer, corroborated PO2 Mendoza's testimony. He testified that he was the one who cornered Unad when he tried to resist and recovered the plastic sachets and buy-bust money from him.[4]

Version of the Defense

The defense witnesses comprised accused-appellant, Susan Camposano, Aileen Badoy, and Celso Ramirez.

According to accused-appellant, he was home on the night of the supposed buy-bust operation against him. He was tending the store and watching television with his three children when Police Officers Paule, Mendoza, and Dalagdagan introduced themselves. They poked their guns and told him they were searching for shabu. He was familiar with the three police officers as he had previously been detained on a carnapping charge that was eventually dismissed. He denied that the three were able to buy shabu from him.[5]

Camposano, accused-appellant's mother-in-law, testified that she was likewise home on the night of the alleged buy-bust operation. At one point during the evening, she followed her grandchildren, who were delivering food to accused-appellant's house. While there, she saw two persons named "Susie" and "Padre" as well as four police officers. She then witnessed accused-appellant being held and beaten. Two of the officers also broke down the door to the bedroom and stole the VHS player and some hats on the wall. The officers instructed her to leave and later handcuffed accused-appellant along with "Susie" and "Padre."

Badoy, Camposano's 15-year old grandchild, and Ramirez, accused-appellant's stepson, corroborated Camposano's testimony.

After trial, the RTC decided against accused-appellant. The dispositive portion of its Decision reads:

WHEREFORE, judgment is rendered finding Leonardo Rusiana y Broquel @ Unad GUILTY beyond reasonable doubt of Violation of Sec. 5, Art. II. of R.A. 9165 and hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of P500,000.00 and to pay the cost.

SO ORDERED.[6]

In his appeal before the CA, accused-appellant claimed that the trial court erred in giving credence to the evidence of the prosecution. He averred that the prosecution was not able to prove his guilt beyond reasonable doubt.

Ruling of the CA

The appellate court affirmed the challenged decision of the RTC. The CA agreed with the RTC that the elements in the crime of illegal sale of drugs were adequately proved. It gave no merit to accused-appellant's argument that the chain of custody over the evidence was broken. It likewise found the defense of frame-up lacking in merit, as accused-appellant was not able to show convincing evidence that the police officers involved in the buy-bust did not perform their duties in a regular and proper manner, or that they were harboring ill motives against him. The dispositive portion reads:

WHEREFORE, premises considered, the March 31, 2006 Decision of the Regional Trial Court of Las Piñas, in Criminal Case No. 02-0678, is hereby AFFIRMED. Pursuant to Section 13(c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.

SO ORDERED.[7]

On January 16, 2008, accused-appellant filed his Notice of Appeal of the CA Decision.

On March 11, 2009, this Court required the parties to submit supplemental briefs if they so desired.

On May 18, 2009, the People, represented by the Solicitor General, manifested that it was no longer filing a supplemental brief.

On June 3, 2009, accused-appellant filed his Supplemental Brief[8] raising an additional assignment of error.

Issues

I

WHETHER THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE EVIDENCE OF THE PROSECUTION WHICH FAILED TO OVERTURN THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED-APPELLANT.

II

WHETHER THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

This Court's Ruling

In calling for an acquittal, the defense claims that there were gaps in the chain of custody of the shabu allegedly seized from accused-appellant, raising doubts as to the ownership of the shabu. It asserts that the non-presentation of PO2 Dalagdagan as prosecution witness resulted in the identity of the prohibited drug being insufficiently established. Citing PO2 Paule and Mendoza's testimonies, the defense claims that since the apprehending officers were not the ones who placed the markings on the shabu immediately after its seizure, there is doubt as to whether this was the one presented during trial. The prosecution also allegedly relied on its self-serving statements in establishing the link between accused-appellant and the shabu that was recovered. Since the frame-up of accused-appellant is, according to the defense, a probability, the presumption of regularity in the performance of official functions could not overthrow the presumption of innocence to which accused-appellant is entitled.

The appeal is, thus, centered on the contention that the integrity of the subject shabu was not ensured and its identity was not established with moral certainty.

Sufficiency of Evidence

Jurisprudence dictates that conviction can be had in a prosecution for illegal sale of regulated or prohibited drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti of the crime.[9] We hold that these elements have been satisfied by the prosecution's evidence.

Trial courts are our eyes. They have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied by a trial court, we must defer to its findings.[10] As found by the trial court and affirmed by the CA, the police officers who testified gave a straightforward narration of the buy-bust operation. We see no circumstance contradicting this finding.

Chain of Custody Requirement

In *People v. Cortez*,[11] this Court held that although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the

seized item" is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with. Hence, exceptions must be recognized, as indeed the Implementing Rules and Regulations (IRR) of RA 9165 does.[12] On its own, a non-compliance with Sec. 21 of RA 9165 will not invalidate an accused's arrest or a seizure made in drug cases. What should be of importance is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." [13]

For reference, we reproduce the testimony of PO2 Paule here:

Q

What I am asking you is what did you do with the items that [Unad] handed to you after you have arrested him?

A

I turned [it over] to our Duty Investigator PO2 Rufino Dalagdagan.

Q

How about the buy-bust money and the other plastic sachets that you confiscated from him, what did you do with those items?

A

I turned it over to PO2 Rufino Dalagdagan, sir.

Q

Now, what did PO2 Rufino Dalagdagan do with the buy-bust money and the shabu that was sold to you by [Unad] after receiving it from you?

A

PO2 Rufino Dalagdagan put markings on it, sir.

Q

What mark did PO2 Dalagdagan do on the item subject of the buy bust operation?

A

He put markings of LBR 12 August 2000.

Q

Now, do you know of the real name of alias [Unad]?

A

Yes, sir.

Q

What is the full name of alias [Unad]?

A

Leonardo B. Rusiana, sir.[14]

x x x x

Q

Now, the shabu that was sold to you by Leonardo B. Rusiana, if you will again see it will you be able to identify it?

A

Yes, sir.

Q

I am showing to you a x x x white mailing envelope marked as Exhibit "H" for the prosecution. Kindly retrieve the items inside that white mailing envelope and pick out [from] the contents thereof, the plastic sachet which according to you was handed to you by Leonardo B. Rusiana during the buy-bust operation[.]

A

Yes, sir, this is the one.

Court Interpreter

And the witness is referring to Exhibit "H-1." [15]

As gleaned from PO2 Paule's testimony, the chain of custody over the shabu was preserved. It was established by the prosecution, as follows: (1) plastic sachets were seized by PO2 Paule from accused-appellant; (2) PO2 Paule turned the items over to PO2 Dalagdagan, who marked each item with the initials "LBR"; (3) a Request for Laboratory Examination was then made by Police Senior Inspector Vicente V. Raquion; and (4) the items were examined by Forensic Chemist Abraham Tecson, and his findings documented in Chemistry Report No. D-432-02 showed that the specimens tested positive for shabu. These links in the chain are undisputed; the integrity of the seized drugs remains intact.

The presentation of PO2 Dalagdagan to establish the identity of the drugs seized is no longer necessary, as it was even stipulated during pre-trial that the existence of the Investigation Report (Exhibit "B") which he prepared was admitted by accused-appellant.[16] During trial, it was also stipulated by the parties that PO2 Dalagdagan's testimony would be in accordance with said Investigation Report.[17] While the presentation of the testimonies of all those who handled the illegal drugs would be ideal, one of the custodians or links in the chain was not presented by agreement of the parties in the case at bar. The prosecution cannot be faulted for its presentation of evidence as it was willing to present PO2 Dalagdagan. *People v. Rivera*[18] is particularly instructive in this respect:

The non-presentation as witnesses of other persons such as the other police officers forming a buy-bust team is not a crucial point against the prosecution since the matter of presentation of witnesses by the prosecution is not for the court to decide. It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Moreover, the testimony of a single prosecution witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is enough to sustain a conviction.

As jurisprudence has shown, what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items,[19] a requisite present in the instant case. The documentary and testimonial evidence, taken together, presented a clear buy-bust operation and satisfied the requisites for a prosecution of illegal sale of drugs.

In giving credence to the prosecution's presentation of the unbroken chain of custody of the illegal drugs, we adhere to the rule that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper or ill motive to falsely charge accused-appellant of a serious offense, or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[20] It must be noted that no complaints were filed against the police officers for their alleged frame-up of accused-appellant. But instead, the defense presented self-serving evidence from accused-appellant's close relatives. To our mind, then, the presumption of regularity in the performance of duties by the police officers must be upheld and accused-appellant's conviction affirmed.

Pecuniary Liability

RA 9165 provides that the unauthorized sale of shabu carries with it the penalty of life imprisonment to death and a fine ranging from PhP 500,000 to PhP 10 million. The trial court, thus, correctly sentenced accused-appellant to life imprisonment and fined him PhP 500,000.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 02347 finding Leonardo Rusiana y Broquel guilty of illegal sale of drugs is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales[*], Peralta, and Del Castillo[**], JJ., concur.

[*] Additional member as per Special Order No. 720 dated October 5, 2009.

[**] Additional member as per September 28, 2009 raffle.

[1] CA rollo, p. 38.

[2] Id. at 39.

[3] Id.

[4] Id. at 39-40.

[5] Id. at 40.

[6] Id. at 42. Penned by Judge Bonifacio Sanz Maceda.

[7] Rollo, p. 9. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Japar B. Dimaampao and Ramon R. Garcia.

[8] Id. at 28.

[9] *People v. Encila*, G.R. No. 182419, February 10, 2009.

[10] See *People v. Darisan*, G.R. No. 176151, January 30, 2009; citing *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 204.

[11] G.R. No. 183819, July 23, 2009.

[12] SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.--The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or

laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items x x x.

[13] Cortez, *supra* note 11; citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448.

[14] TSN, August 18, 2004, pp. 13-15.

[15] *Id.* at 16-17.

[16] CA rollo, p. 38.

[17] *Id.* at 39.

[18] G.R. No. 182347, October 17, 2008, 569 SCRA 879, 893-894.

[19] *People v. Sy*, G.R. No. 185284, June 22, 2009; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636-637.

[20] *Naquita*, *supra* note 13, at 454.

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